

**SETTLEMENT AGREEMENT BETWEEN**  
**MISSOURI REAL ESTATE COMMISSION AND PROSTAR REALTY, LLC**  
**AND MICHAEL R. PHILLIPS**

Come now ProStar Realty, LLC ("ProStar") and Michael R. Phillips ("Phillips") and the Missouri Real Estate Commission ("Commission") and enter into this settlement agreement for the purpose of resolving the question of whether ProStar Realty, LLC's license as a real estate association and Michael R. Phillips' licenses as a real estate broker and broker associate will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensees' licenses, and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo.

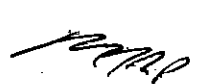
Licensees ProStar and Phillips acknowledge that they understand the various rights and privileges afforded them by law, including the right to a hearing of the charges against them; the right to appear and be represented by legal counsel; the right to have all charges against them proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against them; the right to present evidence on their own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against them and, subsequently, the right to a disciplinary hearing before the Commission at which time they may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against their licenses. Being aware of these rights provided them by operation of law, ProStar and Phillips knowingly and voluntarily waive each and every one of these rights and freely enter into this settlement agreement and agree to abide by the terms of this document, as they pertain to them.

ProStar and Phillips acknowledge that they have received a copy of the documents relied upon by the Commission in determining there was cause to discipline their licenses, along with citations to law and/or regulations the Commission believes were violated.

For the purpose of settling this dispute, ProStar and Phillips stipulate that the factual allegations contained in this settlement agreement are true and stipulates with the Commission that their licenses,

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<sup>1</sup> All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.



numbered 2002026231 (ProStar) and 2005001488, 2000175881 and 2010027771 (Phillips' active broker and broker associate licenses and Phillips' expired broker associate license, respectively) are subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.010-339.205 and 339.710-339.855, RSMo.

Joint Stipulation of Fact and Conclusions of Law

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. Licensee, ProStar, holds an active real estate association license from the Commission, license number 2002026231. The Commission issued ProStar's license on October 22, 2002 and ProStar's license expires June 30, 2016. Licensee's license was current and active at all relevant times herein. Licensee Michael R. Phillips is the designated broker for ProStar Realty, LLC.

3. Licensee, Phillips, holds an active broker and broker associate licenses from the Commission, license numbers 2005001488 and 2000175881, respectively. The Commission issued Phillips' broker license on June 19, 2014 and his broker associate license on April 30, 2014. Both of Licensee's licenses expire on June 30, 2016. Licensee Phillips' licenses were current and active at all relevant times herein. Licensee Phillips also holds a broker associate license, license number 2010027771, issued by the Commission. Licensee Phillips broker associate license expired on June 30, 2014. Licensee's broker associate license was current and active at all times prior to June 30, 2014.

4. In January through March 2013, the Commission conducted a random audit at ProStar. The audit revealed that Phillips was paying commissions to unlicensed entities. The Commission's audit revealed that:

- a. Phillips paid commissions to the "Vanessa Wilde Team, Inc," an unlicensed entity.
- b. Phillips requested, in writing, that the title company pay a commission to "Kevin Green & Associates, LLC," an unlicensed entity.
- c. Phillips stated, in the exit interview with examiners, that he would cease the practice of paying commissions to unlicensed entities.

5. The Commission requested a re-audit on ProStar Realty, LLC at the October 2013 meeting.
6. In October 2014, the Commission conducted a re-audit of ProStar Realty, LLC. The re-audit revealed that Phillips was paying commissions to unlicensed entities. The Commission's audit revealed that:
  - a. Phillips paid commissions to the "Vanessa Wilde Team, Inc," an unlicensed entity.
  - b. Phillips requested, in writing, that the title company pay a commission to "Kevin Green & Associates, LLC," an unlicensed entity.
  - c. Phillips stated, in the exit interview with examiners, that he would cease the practice of paying commissions to unlicensed entities.
7. At its February 2015 meeting, the Commission requested quarterly CPA audits from ProStar. The CPA reports were to confirm and list the payee of all commissions paid by ProStar for each quarter.
8. The first CPA report was due July 31, 2015 for the quarter ending June 30, 2015. This first CPA report was not received from Phillips until August 27, 2015.
9. On August 27, 2015, a CPA report, dated August 21, 2015, was received by the Commission from CPA firm WF and Associates, Inc., and its CPA, Steven G. Froehlich. The report contained a statement from Froehlich that ProStar had "ceased the practice of paying commissions or fees to any unlicensed entity."
10. It does not appear that Steven G. Froehlich is a licensed CPA in Missouri. WF and Associates, Inc., has a Schaumburg, Illinois address and there is no record of Mr. Froehlich holding a Missouri License.
11. The submitted CPA report included transaction detail showing all commission deposits and disbursements for the period of April – June 2015, during which time thirty-one (31) checks were made payable to the "Vanessa Wilde Team, Inc.," an unlicensed entity.
12. As of June 2015, Phillips had continued to pay commissions to unlicensed entities, though informed of this violation.
13. On October 28, 2015, a CPA report, dated October 27, 2015, was received by the Commission from CPA firm WF and Associates, Inc., and its CPA, Steven G. Froehlich. The report contained a statement from Froehlich the ProStar had "ceased the practice of paying commissions or fees to any unlicensed entity."
14. The submitted CPA report included transaction detail showing all commission deposits and disbursements for the period of July 1 – September 21, 2015, during which time twenty-one (21) checks were made payable to the "Vanessa Wilde Team, Inc.," an unlicensed entity.

15. As of September 2015, Phillips has continued to pay commissions to unlicensed entities, though informed of this violation.

16. Section 339.150, RSMo, states:

1. No real estate broker shall knowingly employ or engage any person

to perform any service to the broker for which licensure as a real estate broker or a real estate salesperson is required pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860\*, unless such a person is:

(1) A licensed real estate salesperson or a licensed real estate broker as required by section 339.020; or

(2) For a transaction involving commercial real estate as defined in section 339.710, a person regularly engaged in the real estate brokerage business outside the state of Missouri who has, in such forms as the commission may adopt by rule:

(a) Executed a brokerage agreement with the Missouri real estate broker;

(b) Consented to the jurisdiction of Missouri and the commission;

(c) Consented to disciplinary procedures under section 339.100; and

(d) Appointed the commission as his or her agent for service of process regarding any administrative or legal actions relating to the conduct in Missouri; or

(3) For any other transaction, a person regularly engaged in The real estate brokerage business outside of the state of Missouri. Any such action shall be unlawful as provided by section 339.100 and shall be grounds for investigation, complaint, proceedings and discipline as provided by section 339.100.

2. No real estate licensee shall pay any part of a fee, commission or other compensation received by the licensee to any person for any service rendered by such person to the licensee in buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate, unless such a person is a licensed real estate salesperson regularly associated with such a broker, or a licensed real estate broker, or a person regularly engaged in the real estate brokerage business outside of the state of Missouri.

3. Notwithstanding the provisions of subsections 1 and 2 of this section, any real estate broker who shall refuse to pay any person for services rendered by such person to the broker, with the consent, knowledge and acquiescence of the broker that such person was not licensed as required by section 339.020,

in buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate for which services a license is required, and who is employed or engaged by such broker to perform such services, shall be liable to such person for the reasonable value of the same or similar services rendered to the broker, regardless of whether or not the person possesses or holds any particular license, permit or certification at the time the service was performed. Any such person may bring a civil action for the reasonable value of his services rendered to a broker notwithstanding the provisions of section 339.160.

17. Licensees' conduct, as described in paragraphs 4 through 15 above, constitutes cause to discipline Licensees' licenses.

18. Cause exists for the Commission to take disciplinary action against Licensees' licenses under § 339.100.2(15), (19) and (23), RSMo, which states in pertinent part:

2. The Commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any state-certified real estate appraiser, state-licensed real estate appraiser, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

...

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860\*, or any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860\*;

...

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

...

(23) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated under sections 339.010 to 339.180 and section 339.710 to 339.860\* who is not registered and currently eligible to practice under sections 339.010 to 339.180 and sections 339.710 to 339.860\*[.]

#### Joint Agreed Disciplinary Order

19. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Commission in this matter under the authority of §§ 536.060, 621.045.4 and 621.110, RSMo.

20. The terms of discipline shall include that Licensee ProStar Realty, LLC and Licensee Michael R. Phillips shall pay a civil penalty in the amount of \$1,000.00 pursuant to § 339.100.3, RSMo.

The civil penalty payments shall be made payable to the "Missouri Real Estate Commission" and mailed to the Missouri Real Estate Commission, PO Box 1339, Jefferson City, MO 65102-1339. Said check must be postmarked or hand delivered within 60 days of the execution of this Settlement Agreement. Funds received pursuant to this Order shall be handled in accordance with Section 7 of Article IX of the Missouri Constitution and Section 339.205.8, RSMo. Licensees' failure to pay the full amount of the civil penalties within sixty days of the effective date of this Order shall constitute a violation of this Order.

21. This Agreement does not bind the Commission or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Agreement that are either now known to the Commission or may be discovered.

22. This Agreement does not bind the Commission or restrict the remedies available to it concerning any future violations by Licensees of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms of this Agreement.

23. All parties agree to pay all their own fees and expenses incurred as a result of this case, its settlement or any litigation.

24. The parties to this Agreement understand that the Missouri Real Estate Commission will maintain this Agreement as an open record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

25. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

26. Licensees, together with Licensees' heirs and assigns, and Licensees' attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or

any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

27. If no contested case has been filed against Licensees, Licensees have the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the licenses of the Licensees. If the Licensees desire the Administrative Hearing Commission to review this Agreement, the Licensees may submit this request to: **Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.**

28. If the Licensees have requested review, Licensees and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensees' licenses and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensees' licenses. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensees' licenses, the agreed upon discipline set forth herein shall go into effect. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the Commission may proceed to seek discipline against Licensees as allowed by law. If the Licensees do not submit the agreement to the Administrative Hearing Commission for determination, the agreement shall become effective fifteen (15) days following the signature of the Commission's Executive Director.

**LICENSEES**


  
ProStar Realty, LLC  
Michael R. Phillips, Designated Broker

  
Michael R. Phillips

Date

3-3-18

**COMMISSION**

  
Joseph Denkler  
Executive Director  
Missouri Real Estate Commission

Date

3/9/2016